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No. 79-418

In the Supreme Court of the United States

OCTOBER TERM, 1979

LINCOLN SCHOOL DISTRICT NO. 48, PETITIONER

v.

RAY MARSHALL, SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 19-22) is reported at 600 F. 2d 147. The opinion of the district court (Pet. App. 12-17) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on June 7, 1979 (Pet. App. 23-24). A petition for rehearing was denied on June 28, 1979 (Pet. App. 26). The petition for a writ of certiorari was filed on September 13, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the court of appeals correctly concluded that petitioner's termination of four cafeteria cooks who had initiated the filing of a wage complaint with the Department of Labor was an unlawful retaliatory firing.

STATEMENT

In January 1976, the Secretary of Labor, pursuant to Section 17 of the Fair Labor Standards Act ("the Act"), 29 U.S.C. 217, filed this suit in the United States District Court for the Western District of Arkansas on behalf of four former employees of petitioner. The complaint alleged that petitioner's termination of the employees was a retaliatory firing in violation of Section 15(a)(3) of the Act, 29 U.S.C. 215(a)(3), and sought a reinstatement order, back pay, and injunctive relief. Following a bench trial, the district court found that, although the Secretary had proved a prima facie case, petitioner's actions nonetheless were economically justified and thus did not violate the Act (Pet. App. 12-17). The Secretary appealed and the court of appeals reversed (Pet. App. 19-22).

The evidence at trial showed that the employees in question were four of the eight workers (including a supervisor) employed by petitioner at the school cafeteria. In February 1975, the four cooks composed a letter to the Department of Labor regarding petitioner's failure to pay overtime compensation as required by the Act. The other employees (except the supervisor) signed this letter, which led to a Department of Labor investigation. Subsequently, the Secretary informed petitioner that it had violated the Act. Thereafter, at a meeting held on May 13, 1975, the school board voted the overtime wages due all of the employees but at the same time decided not to rehire the four cooks who had instigated the wage complaint (Pet. App. 12-13, 20; Tr. 21-25, 42-44, 65-69, 71, 81-82, 96, 112-113, 124-125, 143-147).

At trial, petitioner sought to establish that the school board was unaware of the complaint letter, that the employees had been fired because of dissension among the cafeteria staff, and that the termination was the result of economic necessity. The district court seemingly rejected the first two defenses, specifically finding that "the four had been good employees" and that respondent had "established a prima facie case of discrimination" (Pet. App. 16, 14; see also Tr. 24-25, 44, 67-69, 83-84). The court nonetheless entered a judgment for petitioner on the ground that it had demonstrated that the firing was necessitated by economic exigencies (Pet. App. 14-17). The court based its conclusion on the fact that petitioner "has not replaced the four cooks whose contracts were not renewed, as the new procedures [regarding the operation of the cafeteria] have proved both efficient and satisfactory as well as staying within the school budget" (Pet. App. 15).

On appeal, petitioner conceded that no permanent change in the cafeteria had occurred and that in fact the four dismissed employees had been replaced the following school year (Pet. App. 21). Accordingly, the court of appeals reversed the judgment of the district court and remanded the case for entry of an appropriate reinstatement and back pay order (Pet. App. 22).

ARGUMENT

Petitioner contends (Pet. 6-9) that the court of appeals should have remanded this case for a specific finding about whether the school board was aware of the complaint filed by the discharged employees. However, in light of the circumstances described below, the court of appeals correctly rejected this claim. Further review of this fact-bound question is unwarranted.

The undisputed evidence at trial showed that the school board, acting on the recommendation of the superinten-

dent who controlled the cafeteria operations, terminated the four employees at the same meeting that it considered the Department of Labor's investigation report and voted overtime pay to those very workers. Although the board members testified that they were unaware of the complaint letter at the time of the termination decision,[1] at least one of the board members had previously stated in a deposition that he in fact knew about the complaint letter at the time of the Department's investigation (Tr. 92-94). In addition, the chairman of the school board admitted that his aunt was one of the retained cafeteria workers who had signed but had not prepared the complaint letter (Tr. 144). Finally, the record reflects that the employees, who were subsequently replaced, were good employees with unblemished histories of employment. In short, as the court of appeals observed (Pet. App. 22), "the only distinguishing characteristic common to all four cooks is that they instigated the submission of a wage complaint to the Department of Labor."

Petitioner attempted to explain the termination of the four employees as a coincidence justified by the employees' behavior and economic necessity. The district court determined that the employees were not fired for disciplinary reasons and held that the Secretary had established a prima facie case. Based on a misunderstanding of the facts, however, the court sustained petitioner's economic necessity defense. Once petitioner conceded on appeal that it *had* replaced the fired workers, the court of appeals correctly concluded that there was no economic justification for the termination (Pet. App. 21). Petitioner

[1]Of course, even if the school board members were unaware of the complaint, petitioner would still have violated the Act if its superintendent had recommended the termination of the employees because of the complaint they had filed with the Department of Labor.

does not assert that it had any other lawful reason to terminate the employees, and the record does not suggest one. Accordingly, the Secretary's prima facie showing of a retaliatory firing in violation of Section 15(a)(3) of the Act stands unrebutted. In these circumstances, the court of appeals properly directed the district court to enter judgment in favor of the Secretary.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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